MONTANA LEGISLATIVE HISTORY

Chapter 257 19 99

Bill H 455 S _____ Original bill & history ✓ C

H. Committee on Judiciary			S. Committee on Judiciary		
Hearing Date(s)	2/8	✓ C	Hearing Date(s)	3/26	✓ C
	2/10	___ C		___	___ C
	___	___ C		___	___ C
	___	___ C		___	___ C
Date Out	___	___ C			

Did this bill originate in an interim committee? ___ Yes ___ No

Committee _____ Report _____

LEGISLATIVE HISTORIES

The 1997 Montana Legislature dramatically changed the nature of legislative minutes. This altered format continues with the 1999 legislative minutes. The minutes from House committees are extremely sparse in content, offering no substantive information from which to glean legislative intent. The Senate committees' minutes are fuller in content.

Exhibits, which include written statements, attendent information, roll call votes, roll call attendance, a list of those from the public who were present, and specific action taken on legislative bills, will be available only through the Historical Society Archives, 444-4774, and from a CD-ROM produced by the Legislative Services Division, 444-3064.

Just as in the 1997 legislative session, the 1999 House and Senate committee hearings were recorded. For information on accessing the tapes, or purchasing them, contact the Archives, 444-4774.

If you have concerns over the format of these legislative minutes, it is suggested that you contact your state legislators.

3/15	Signed by President		
3/15	Transmitted to Governor		
3/17	Signed by Governor		
3/19	Chapter Number Assigned Chapter Number 94 Effective Date: 7/01/1999 - All Sections		

HB 455 Introduced by Soft, et al. *LC1343 Drafter: Lane*

Generally Revise the Laws Relating to Adoption;...

2/01	Introduced and 1st Reading		
2/01	Referred to Judiciary		
2/08	Hearing		
2/10	Committee Executive Action--Bill Passed	16	4
2/11	Committee Report--Bill Passed		
2/13	2nd Reading Passed	90	10
2/15	3rd Reading Passed	87	13
	Transmitted to Senate		
2/22	Referred to Judiciary		
3/26	Hearing		
3/26	Committee Executive Action--Bill Concurred	7	0
3/26	Committee Report--Bill Concurred		
3/27	2nd Reading Concurred	48	0
3/29	3rd Reading Concurred	47	0
	Returned to House		
3/30	Sent to Enrolling		
3/30	Returned from Enrolling		
3/30	Signed by Speaker		
3/31	Signed by President		
3/31	Transmitted to Governor		
4/05	Signed by Governor		
4/07	Chapter Number Assigned Chapter Number 257 Effective Date: 4/05/1999 - All Sections		

HB 456 Introduced by Smith *LC1440 Drafter: McClure*

Prohibit a District from Extending a Bus Route to Transport Pupils from Outside its Transportation Service Area Without Approval by the Electorate of Both Districts;...

2/01	Introduced and 1st Reading
2/01	Referred to Education
2/05	Hearing
2/10	Tabled in Committee
3/01	Missed Deadline for General Bill Transmittal

HB 457 Introduced by Kitzenberg *LC0874 Drafter: Bohyer*

Require the Department of Administration, When Purchasing New Vehicles, to Ensure That a Minimum of 5 Percent of All New Vehicles Purchased Are Powered by Renewable Fuels;...

12/03	Fiscal Note Needed
2/01	Introduced and 1st Reading
2/01	Referred to State Administration

3

1 HOUSE BILL NO. 455

2 INTRODUCED BY _____
(Primary Sponsor)

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS RELATING TO ADOPTION;
5 AMENDING SECTIONS 42-1-105, 42-2-206, 42-2-217, 42-2-412, 42-2-607, 42-2-609, 42-2-610,
6 42-2-619, 42-3-203, 42-3-212, 42-3-213, 42-4-302, 42-4-303, 42-4-304, 42-4-309, 42-4-310,
7 42-5-101, 42-5-109, AND 42-5-202, MCA; REPEALING SECTION 42-4-305, MCA; AND PROVIDING AN
8 IMMEDIATE EFFECTIVE DATE."

9

10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11

12 **Section 1.** Section 42-1-105, MCA, is amended to read:

13 "**42-1-105. Who may be adopted.** (1) A child is legally free for adoption if:

14 (a) the child does not have a living parent;

15 (b) the parental rights of the living parents of the child have been terminated according to the
16 laws of this state or of another jurisdiction; or

17 (c) the living parents, guardian authorized by the court, or department or agency with custody
18 of the child consent to the adoption.

19 (2) An adult may be adopted as provided in 42-4-401 through 42-4-405.

20 (3) A stepchild may be adopted as provided in 42-4-301 through ~~42-4-305~~ 42-4-304 and
21 42-4-309 through 42-4-312."

22

23 **Section 2.** Section 42-2-206, MCA, is amended to read:

24 "**42-2-206. When putative father to register -- actual knowledge of pregnancy not required.** (1)
25 In order to be entitled, because of registration, to receive notice of a termination of parental rights
26 proceeding, a putative father's registration form complying with the requirements of 42-2-205 must be
27 received by the department not later than ~~5 days prior to a hearing to terminate parental rights~~ 72 hours
28 after the child's birth.

29 (2) A putative father may file all information required by 42-2-205 before a child's birth even
30 though the putative father has no actual knowledge that a pregnancy has occurred or that a pregnancy

has continued through gestation."

Section 3. Section 42-2-217, MCA, is amended to read:

"**42-2-217.** ~~(Effective October 1, 1998)~~ **Registry search -- request -- affidavit.** (1) The following persons may at any time request that the department search the registry to determine whether a putative father is registered in relation to a child who is or may be the subject of a proceeding to terminate parental rights:

(a) a representative of the department;

(b) a representative of an agency when the agency is or may be arranging an adoption;

(c) a prospective adoptive parent or an attorney representing a prospective adoptive parent in a direct parental placement adoption who has the notarized consent of the birth mother; or

(d) any woman who is the subject of a registration.

(2) ~~When a petition to terminate parental rights for purposes of an adoption is filed, the petitioner shall:~~

~~(a) request that the department search the registry at least 1 day after the expiration of the period specified under 42-2-206; and~~

~~(b) file an affidavit prepared by the department in response to a request under subsection (2)(a) with the court presiding over the termination of parental rights proceeding under 42-2-603. The affidavit must meet~~ Upon request of a person listed in subsection (1), the department shall submit an affidavit pursuant to the requirements of subsections (4) and (5).

(3) A request for information about a registration from the department must be in writing.

(4) Not later than 5 days after receiving a request ~~under subsection (2)(a)~~ for a registry search, the department shall submit an affidavit to the requestor verifying whether a putative father has registered within the period allowed under 42-2-206 in relation to a mother whose child or expected child is the subject of the termination proceeding.

(5) Whenever the department finds that one or more putative fathers are registered, the department shall:

(a) submit a copy of each registration form with the department's affidavit; and

(b) include in the affidavit the date that the department representative, agency, or attorney submitted the request for the search.

5

1 (6) A court may not issue an order terminating parental rights unless the department's affidavit
2 under subsection (5) is filed with the court."
3
4 **Section 4.** Section 42-2-412, MCA, is amended to read:
5 **"42-2-412. Content of relinquishment and consent to adopt.** (1) A relinquishment and consent
6 to adopt must be in writing and must contain:
7 (a) the date, place, and time of the execution of relinquishment and consent to adopt;
8 (b) the name, date of birth, and current mailing address of the individual executing the
9 relinquishment and consent to adopt;
10 (c) the date of birth and the name of the child to be adopted; and
11 (d) the name, address, and telephone numbers of the department or agency to which the child
12 is being relinquished or the name, address, and telephone numbers of the prospective adoptive parent ~~or~~
13 ~~the lawyer representing the prospective adoptive parent~~ with whom the individual executing the
14 relinquishment and consent has placed or intends to place the child for adoption.
15 (2) A relinquishment and consent to adopt executed by a parent or guardian must state that the
16 parent or guardian executing the document is voluntarily and unequivocally consenting to the:
17 (a) permanent transfer of legal and physical custody of the child to the department or agency for
18 the purposes of adoption; or
19 (b) transfer of permanent legal and physical custody to, and the adoption of the child by, a
20 specific identified adoptive parent whom the parent or guardian has selected.
21 (3) A relinquishment and consent to adopt must state:
22 (a) that after the document is signed or confirmed in substantial compliance with this section,
23 it is final and, except under a circumstance stated in 42-2-411, may not be revoked or set aside for any
24 reason, including the failure of an adoptive parent to permit the individual executing the relinquishment
25 and consent to adopt to visit or communicate with the child;
26 (b) that the ~~adoption will extinguish~~ relinquishment will result in the extinguishment of all parental
27 rights and obligations that the individual executing the relinquishment and consent to adopt has with
28 respect to the child, except for arrearages of child support unless the arrearages are waived by the person
29 to whom they are owed, and that the relinquishment will remain valid whether or not any agreement for
30 visitation or communication with the child is later performed;

6

(c) that the individual executing the relinquishment and consent to ~~adoption~~ adopt has:

(i) received a copy of the relinquishment and consent to ~~adoption~~ adopt;

(ii) received a copy of a written agreement by the department, agency, or prospective adoptive parent to accept temporary custody and to provide support and care to the child until an adoption petition is granted or denied;

(iii) if required, received counseling services ~~and information about adoption~~ pursuant to 42-2-409 explaining the meaning and consequences of an adoption;

(d) in direct parental placement adoptions, that the individual has:

~~(i) been advised if the individual is:~~

~~(A)~~(i) if a minor parent, been advised by a lawyer who is not representing ~~an~~ the adoptive parent ~~or the agency to which the child is being relinquished~~; ~~or~~

~~(B)~~(ii) if an adult, been advised of the right to have a lawyer who is not representing ~~an~~ the adoptive parent ~~or the agency and whose~~;

(iii) been advised that the attorney fees are allowable expenses that can be paid by the prospective adoptive parents; and

~~(ii)~~(iv) been provided with a copy of the prospective adoptive parent's preplacement evaluation;

(e) in agency and direct parental placement adoptions, that the individual has:

(i) been advised of the obligation to provide the medical and social history information required under 42-3-101 pertaining to disclosures; and

(ii) not received or been promised any money or anything of value for execution of the relinquishment and consent to adopt, except for payments authorized by 42-7-101 and 42-7-102.

(4) A relinquishment and consent to adopt may provide that the individual who is relinquishing waives notice of any proceeding for adoption."

Section 5. Section 42-2-607, MCA, is amended to read:

"**42-2-607. Grounds for termination of parental rights.** The court may terminate a parent's rights to a child who is the subject of an adoption proceeding based upon:

(1) the voluntary acts of the parent in:

(a) executing a voluntary relinquishment and consent to adopt;

(b) submitting a notarized denial of paternity executed pursuant to 42-2-421; or

7

(c) submitting a notarized acknowledgment of paternity and denial of interest in custody of the child executed pursuant to 42-2-422;

(2) a determination under 42-2-608 that the parent is unfit;

(3) a determination under 42-2-609 that the relationship of parent and child does not exist; ~~or~~

(4) a determination under 42-2-610 that a putative father has failed to establish and maintain a substantial relationship with the child; or

~~(4)~~(5) a determination that the parent has irrevocably waived parental rights by failing to timely act to protect the rights."

Section 6. Section 42-2-609, MCA, is amended to read:

"**42-2-609. Determination that no parent and child relationship exists.** For purposes of making a child available for adoption, the court may terminate the parental rights of a putative father on the grounds that the parent and child relationship does not exist if:

(1) a judicial determination is made under 40-6-107 that the parent and child relationship does not exist. This includes the termination of the parental rights of the husband of the mother who is placing the child for adoption or the parental rights of an individual who is a presumed father of the child.

(2) a determination is made that:

(a) an individual has not timely registered with the putative father registry;

(b) ~~a person~~ an individual has not been adjudicated, in Montana, to be the father of the child for the purpose of child support;

(c) ~~a person~~ an individual has not been recorded on the child's birth certificate as the child's father;

(d) ~~a person is~~ an individual has not openly ~~living~~ lived with the child and the child's mother at the time that the proceeding is initiated or at the time that the child was placed in the care of an authorized agency and ~~a person~~ an individual is not representing to the public that the ~~person~~ individual is the child's father; ~~or~~ and

(e) the child's mother was not married to the person who is the subject of the termination proceedings at the probable time of the child's conception or at the time that the child was born; or

(3) a putative father ~~who~~ appears at the hearing but is unable to establish by a preponderance of the evidence the minimum requirements provided in 42-2-610 for demonstrating the establishment of

8

1 a substantial relationship with the child."
2
3 **Section 7.** Section 42-2-610, MCA, is amended to read:
4 **"42-2-610. Putative father -- termination based upon failure to establish substantial relationship.**
5 (1) The parental rights of a putative father may be terminated by the court if the putative father has failed
6 to timely establish and maintain a substantial relationship with the child.
7 (2) A putative father who is not married to the child's mother but who has openly lived with the
8 child since the child's birth or for a period of 6 months immediately preceding placement of the child with
9 adoptive parents and has openly claimed to be the father of the child during that period is considered to
10 have developed a substantial relationship with the child and to have otherwise met the requirements of
11 this section.
12 (3) In order to meet the minimal showing of having established a substantial relationship with
13 regard to a child who is the subject of an adoption proceeding, a putative father has the burden of
14 showing that the putative father has:
15 (a) demonstrated a full commitment to the responsibilities of parenthood by providing financial
16 support for the child in a fair and reasonable sum and in accordance with the putative father's ability and
17 by either:
18 (i) visiting the child at least monthly when physically and financially able to do so; or
19 (ii) having regular contact with the child or with the person or agency having the care and custody
20 of the child when physically and financially able to do so; and
21 (b) manifested an ability and willingness to assume legal and physical custody of the child if the
22 child was not in the physical custody of the other parent.
23 (4) In order to meet the minimal showing of having established a substantial relationship with
24 regard to a child who is the subject of an adoption proceeding involving a child who is under 6 months
25 of age at the time that the child becomes the subject of adoption proceedings, a putative father has the
26 burden to show that:
27 ~~(a)~~ the putative father has manifested a full commitment to parental responsibilities by:
28 (a) performing all of the acts described in this subsection (4) prior to the time that the mother
29 executed a relinquishment and consent ~~for adoption, including registering with the putative father registry~~
30 to adopt; ~~and~~

9

1 (b) if the putative father had actual knowledge of the pregnancy, paying a fair and reasonable
2 amount of the expenses incurred in connection with the pregnancy and the child's birth in accordance
3 with the putative father's means when not prevented from doing so by the person or authorized agency
4 having lawful custody of the child;
5 (c) making reasonable and consistent payments, in accordance with the putative father's means,
6 for the support of the child since birth;
7 (d) visiting regularly with the child; and
8 (e) manifesting an ability and willingness to assume legal and physical custody of the child if,
9 during this time, the child was not in the physical custody of the mother.
10 (5) The subjective intent of a putative father, whether expressed or otherwise, unsupported by
11 evidence of acts specified in this section does not preclude a determination that the father failed to meet
12 the requirements of this section."
13
14 **Section 8.** Section 42-2-619, MCA, is amended to read:
15 "**42-2-619. Expediency.** A contested termination of parental rights action must take precedence
16 over other cases and matters in the court or on appeal. The court shall examine any issues raised in
17 challenging termination of a parent's rights or regarding the validity of any ~~interlocutory or final~~ adoption
18 decree and shall render a decision as soon as possible."
19
20 **Section 9.** Section 42-3-203, MCA, is amended to read:
21 "**42-3-203. Information to be reviewed in conducting preplacement evaluation.** (1) A
22 preplacement evaluation must include a review of the following information about the prospective
23 adoptive parent:
24 (a) a check of criminal conviction data, data on substantiated abuse or neglect of a child under
25 Title 41, chapter 3, and data pertaining to any involvement in incidents of domestic violence ~~by any~~
26 ~~person over the age of 13 living in the prospective home~~;
27 (b) medical and social history and current health;
28 (c) assessment of potential parenting skills;
29 (d) assessment of ability to provide adequate financial support for a child; and
30 (e) assessment of the level of knowledge and awareness of adoption issues, including, when

10

appropriate, matters relating to open, interracial, cross-cultural, and special needs adoptions.

(2) (a) The prospective adoptive parent, the department of justice, and other state, county, and local agencies, after written notice to the subject of the study, shall give the ~~department or agency~~ evaluator completing the adoption study substantiated data pertaining to criminal convictions and any reports concerning domestic violence and substantiated abuse or neglect of children or vulnerable adults.

(b) The adoption study ~~must~~ may also include a check of the youth court records of ~~each~~ any person ~~over the age of 13~~ living in the prospective home. Pursuant to 41-5-215 and 41-5-216, the youth court shall release the requested information to the ~~agency or department~~ evaluator completing the adoption study. ~~The~~ If applicable, the study must include an evaluation of the effect of a conviction, adjudication, or finding of substantiated abuse or neglect on the ability to care for a child.

(3) The preplacement evaluation must include at least one in-home visit with the prospective adoptive parent and at least one interview with each family member."

Section 10. Section 42-3-212, MCA, is amended to read:

"**42-3-212. Court waiver for relatives.** ~~The~~ In a direct parental placement adoption, if the court is satisfied that adoption is in the best interests of the child, the court may waive the requirement of a preplacement evaluation when a parent or guardian places a child for adoption directly with an extended family member of the child. A postplacement evaluation must be conducted during the pendency of a proceeding for adoption."

Section 11. Section 42-3-213, MCA, is amended to read:

"**42-3-213. Filing of evaluation in adoption proceedings.** (1) In a direct parental placement adoption, the preplacement evaluation report must be filed with the court in support of the petition to terminate parental rights for purposes of adoption.

(2) In an adoption arranged by the department or a licensed child-placing agency, the preplacement evaluation report must be permanently maintained in the files of the department or the licensed child-placing agency."

Section 12. Section 42-4-302, MCA, is amended to read:

"**42-4-302. Standing to adopt stepchild.** (1) A stepparent has standing to file a petition for

adoption of a minor ~~stepchild~~ child of the stepparent's spouse if:

(a) the spouse has ~~sole~~ legal and physical custody of the child and the child has been in the physical custody of the spouse and the stepparent during the 60 days preceding the filing of a petition for adoption;

(b) the spouse is deceased or mentally incompetent but, before dying or being judicially declared mentally incompetent, had legal and physical custody of the child, and the child has resided primarily with the stepparent during the 12 months preceding the filing of the petition; or

(c) the department or an agency placed the child with the stepparent.

(2) For good cause shown, a court may allow an individual who is not the stepparent but who has the consent of the custodial parent of a child to file a petition for adoption. The petition must be treated as if the petitioner were a stepparent.

(3) A petition for adoption by a stepparent may be joined with a petition for termination of parental rights."

Section 13. Section 42-4-303, MCA, is amended to read:

"**42-4-303. Consent to adoption.** (1) Upon the filing of the petition for adoption by the stepparent, the child's custodial parent shall file consent to adoption executed pursuant to 42-4-304 ~~or 42-4-305~~.

(2) If the child has attained 12 years of age, the child ~~must~~ shall consent to the adoption."

Section 14. Section 42-4-304, MCA, is amended to read:

"**42-4-304. Consent to adoption -- stepparent's spouse.** (1) A consent to adoption executed by a parent who is the stepparent's spouse must be signed in the presence of an individual authorized to take acknowledgments.

(2) A consent must be in writing and must state that:

(a) the parent executing the consent has legal and physical custody of the ~~parent's~~ child and voluntarily and unequivocally consents to the adoption of the child by the stepparent;

(b) the adoption will not terminate the parental relationship between the parent executing the consent and the child; and

(c) the parent executing the consent understands and agrees that:

(i) the adoption will terminate the relationship of parent and child between the child's other parent

12

and the child and will terminate any existing court order for custody, visitation, or communication with the child;

(ii) the child and any descendant of the child will retain rights of inheritance from or through the child's other parent; and

(iii) a court order for visitation or communication with the child by an individual related to the child through the parent executing the ~~consent~~ relinquishment or an agreement or order concerning another individual that is approved by the court survives the decree of adoption, but that failure to comply with the terms of the order or agreement is not a ground for revoking or setting aside the consent or the adoption."

Section 15. Section 42-4-309, MCA, is amended to read:

"**42-4-309. ~~Postplacement~~ Preplacement and postplacement evaluation period -- waiver.** ~~If the child is a stepchild or a member of the extended family of the petitioner, the court may, if~~ In a stepparent adoption, if the court is satisfied that the adoption is in the best interests of the child, the court may waive the requirement of a preplacement evaluation and the 6-month postplacement evaluation ~~period~~ and ~~the postplacement evaluation~~ report and grant a decree of adoption."

Section 16. Section 42-4-310, MCA, is amended to read:

"**42-4-310. Petition for adoption -- notice -- hearing.** A stepparent who desires to adopt a stepchild ~~must file a~~ shall obtain an order of termination of parental rights of the child's noncustodial parent prior to or contemporaneously with the petition to adopt. Any necessary consents must be filed with the petition for adoption.~~, any necessary consents, any required postplacement evaluation, give notice~~ Notice of the hearing on the petition~~,~~ must be given, and the stepparent shall attend ~~a~~ the hearing conducted by the court."

Section 17. Section 42-5-101, MCA, is amended to read:

"**42-5-101. Petition for adoption.** (1) A petition for adoption ~~must be filed in triplicate,~~ must be notarized by the petitioners~~,~~ and must specify:

(a) the full names, ages, and place and duration of residence of the petitioners;

(b) the current marital status of petitioners and, if married, the place and date of the marriage;

13

1 (c) the circumstances under which the petitioners obtained physical custody of the child and the
2 name of the individual or agency ~~who~~ that placed the child;
3 (d) the date and place of birth of the child, if known;
4 (e) the name used for the child in the proceeding and, if a change in name is desired, the full
5 name by which the child is to be known;
6 (f) that it is the desire of the petitioners that the relationship of parent and child be established
7 between the petitioners and the child and to have all the rights and be subject to all the duties of that
8 relationship;
9 (g) a full description and statement of value of all property owned or possessed by the child;
10 (h) the facts, if any, that excuse consent on the part of a person whose consent is required for
11 the adoption;
12 (i) that any applicable law governing interstate or intercountry placement was complied with;
13 (j) that, if applicable, the Indian Child Welfare Act, 25 U.S.C. 1901, et seq., was complied with;
14 (k) whether a previous petition has been filed by the ~~petitioner~~ petitioners to adopt the child at
15 issue or any other child in any court and the disposition of the petitions; and
16 (l) the name and address, if known, of any person who is entitled to receive notice of the petition
17 for adoption.
18 (2) There must be attached to or accompanying the petition:
19 (a) any written consent required by ~~42-4-405 and 42-5-101 through 42-5-109~~ 42-2-301;
20 (b) a certified copy of any court order terminating the rights of the child's parents;
21 (c) a certified copy of any existing court order in any pending proceeding concerning custody of
22 or visitation with the child;
23 (d) a copy of any agreement with a public agency to provide a subsidy for the benefit of the child
24 with a special need;
25 (e) the postplacement evaluation prepared pursuant to 42-4-113 or 42-4-209;
26 (f) a disclosure of any disbursements made in connection with the adoption proceeding.
27 (3) One copy of the petition must be retained by the court. A copy must be sent to:
28 (a) the department or to the agency participating in the adoption proceeding; or
29 (b) the parent placing the child for adoption in a direct parental placement adoption."
30

1 **Section 18.** Section 42-5-109, MCA, is amended to read:
2 "**42-5-109. Decree of adoption.** A decree of adoption must state:
3 (1) the original name of the child;
4 (2) the name of the petitioner for adoption;
5 (3) whether the petitioner is married or unmarried;
6 (4) whether the petitioner is a stepparent of the child;
7 (5) the name by which the child is to be known;
8 (6) for a child born in Montana, a direction to the vital statistics bureau to issue a new birth
9 certificate unless the adoptee is 12 years of age or older and requests that a new certificate not be
10 issued;
11 (7) the child's date and place of birth, if known;
12 (8) the effect of the decree of adoption as stated in 42-5-202;
13 (9) that the adoption is in the best interests of the child; and
14 (10) if known, whether ~~the~~ either birth ~~mother~~ parent objects to the release of the original birth
15 certificate information upon the adoptee reaching 18 years of age."
16
17 **Section 19.** Section 42-5-202, MCA, is amended to read:
18 "**42-5-202. Effect of decree.** (1) After the decree of adoption is entered:
19 (a) the relationship of parent and child and all the rights, duties, and other legal consequences
20 of the relation of parent and child exist between the adoptee and the adoptive parent and the kindred of
21 the adoptive parent;
22 (b) the former parents and the kindred of the former parents of the adoptee, unless they are the
23 adoptive parents or the spouse of an adoptive parent, are relieved of all parental responsibilities for the
24 adoptee and have no rights over the adoptee except for a former parent's duty to pay arrearages for child
25 support.
26 (2) A decree of adoption ~~should~~ must include ~~a~~ notice to the vital statistics bureau ~~as to the~~ if
27 it is known that either birth ~~mother's consent~~ parent objects to release of the information on the original
28 birth certificate upon the adoptee reaching 18 years of age.
29 (3) The relationship of parent and child for the purposes of intestate succession is governed by
30 Title 72."

15

1

2 NEW SECTION. **Section 20. Repealer.** Section 42-4-305, MCA, is repealed.

3

4 NEW SECTION. **Section 21. Effective date.** [This act] is effective on passage and approval.

5 - END -

16

HB 407 SPONSOR: Younkin, Cindy SHORT TITLE: Revise adjudication laws
REFERRED ON: 01/28/1999 HEARD ON: 02/02/1999
EXECUTIVE ACTION: 02/09/1999 Bill Passed as Amended -- VOTE: 20 - 0
FINAL DISPOSITION 04/22/1999 (S) Died in Standing Committee

HB 424 SPONSOR: Mangan, Jeff SHORT TITLE: Revise community corrections act
REFERRED ON: 01/29/1999 HEARD ON: 02/05/1999
TABLED ON: 02/08/1999
FINAL DISPOSITION 03/31/1999 (H) Missed Deadline for Revenue Bill Transmittal

---

HB 425 SPONSOR: Mangan, Jeff SHORT TITLE: Actions to abate drug and gang related nuisances
REFERRED ON: 01/29/1999 HEARD ON: 02/03/1999
TABLED ON: 02/08/1999
TABLED ON: 02/11/1999
FINAL DISPOSITION 03/01/1999 (H) Missed Deadline for General Bill Transmittal

---

HB 426 SPONSOR: Jore, Rick SHORT TITLE: Revise state-tribal cooperative agreements
REFERRED ON: 01/29/1999 HEARD ON: 02/09/1999
TABLED ON: 02/11/1999
FINAL DISPOSITION 03/01/1999 (H) Missed Deadline for General Bill Transmittal

---

HB 449 SPONSOR: Hurdle, Joan SHORT TITLE: Revise deviate sexual conduct law
REFERRED ON: 02/01/1999 HEARD ON: 02/05/1999
EXECUTIVE ACTION: 02/10/1999 Bill Passed -- VOTE: 10 - 9
FINAL DISPOSITION 02/20/1999 (H) 2nd Reading Pass as Amended Motion Failed; Vote: 37 - 63

HB 455 SPONSOR: Soft, Loren SHORT TITLE: Generally revise laws relating to adoption
REFERRED ON: 02/01/1999 HEARD ON: 02/08/1999
EXECUTIVE ACTION: 02/10/1999 Bill Passed -- VOTE: 16 - 4
FINAL DISPOSITION 04/07/1999 Chapter Number Assigned

HB 459 SPONSOR: Clark, Robert SHORT TITLE: Concealed weapon permit reciprocity with other states
REFERRED ON: 02/01/1999 HEARD ON: 02/11/1999
EXECUTIVE ACTION: 02/12/1999 Bill Passed as Amended -- VOTE: 19 - 1
FINAL DISPOSITION 04/29/1999 Chapter Number Assigned

12

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN ROBERT C. CLARK**, on February 8, 1999 at 8:00 A.M., in Room 312 - 1 Capitol.

ROLL CALL

Members Present:

Rep. Robert C. Clark, Chairman (R)
Rep. Dan McGee, Vice Chairman (R)
Rep. Diana Wyatt, Vice Chairman (D)
Rep. Chris Ahner (R)
Rep. Shiell Anderson (R)
Rep. Paul Clark (D)
Rep. Aubyn A. Curtiss (R)
Rep. Bill Eggers (D)
Rep. Tom Facey (D)
Rep. Steven Gallus (D)
Rep. Gail Gutsche (D)
Rep. Joan Hurdle (D)
Rep. Rick Jore (R)
Rep. Sam Kitzenberg (R)
Rep. Brad Molnar (R)
Rep. Mark Noennig (R)
Rep. Jim Shockley (R)
Rep. Loren Soft (R)
Rep. Carol Williams (D)
Rep. Cindy Younkin (R)

Members Excused: None.

Members Absent: None.

Staff Present: John MacMaster, Legislative Branch
Pam Schindler, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:
Hearing(s) & Date(s) Posted: HB 455,, 2/7/1999

Executive Action: HB 424, HB 425- both tabled;
HB 374-Do Pass as amended

Sponsor:

Rep. Soft presented HB 455.
{Tape : 1; Side : A; Approx. Time Counter : 25 - 104}

Proponents:

Anne Gilkey, Supreme Court Assessment Program
{Tape : 1; Side : A; Approx. Time Counter : 104 - 130}
EXHIBIT(1)

Rosemary Miller, Catholic Social Services
*{Tape : 1; Side : A; Approx. Time Counter : 130 - 145}*Mark
Rickes, LDS Adoption Services
{Tape : 1; Side : A; Approx. Time Counter : 145 - 159}
Bill Driscoll, Catholic Social Services-adoption attorney
{Tape : 1; Side : A; Approx. Time Counter : 159 - 186}

Opponents:

None
Informational Testimony:

None
Questions from Committee Members and Responses:

{Tape : 1; Side : A; Approx. Time Counter : 186 - 361}
Closing by Sponsor:

Rep. Soft made closing statements
{Tape : 1; Side : A; Approx. Time Counter : 361 - 397}

EXECUTIVE ACTION ON HB 59

Motion: **REP. MCGEE** moved that **HB 59 DO PASS.**
EXHIBIT(2)
EXHIBIT(3)
EXHIBIT(4)

Motion: **REP. SHOCKLEY** moved that **HB 59 BE AMENDED.**

Discussion: **REP. SHOCKLEY** explained his amendment will enhance public safety with plea bargains. Motion: **REP. CLARK** moved that **HB 59 BE AMENDED.** Amendments appear to need work on them through the Dept, of Corrections. **Rep. Hurdle** moved **HB 59** be **postponed** until amendments are correct. **Motion passed; HB 59 postponed.**

EXECUTIVE ACTION ON HB 425

Motion: REP. GALLUS moved that HB 425 DO PASS.
Motion/Vote: REP. HURDLE moved that HB 425 BE TABLED. Motion carried 18-2 with Gallus and Shockley voting no.
{Tape : 3; Side : A; Approx. Time Counter : 290 - 327}

EXECUTIVE ACTION ON HB 455

Motion: REP. MCGEE moved that HB 455 DO PASS.
REP. MCGEE withdrew HB 455 motion.

Meeting adjourned.

20

EXHIBIT 1
DATE 2/8/99
HB 455

Testimony in Support of HB 455
Ann Gilkey
Court Assessment Program

February 8, 1999

The 1995 Legislature required DPHHS to convene a study group to review Montana's adoption statutes and the proposed Uniform Adoption Act. Over the biennium, the adoption task force (an ad hoc group of interested parties) compiled legislation that became HB 603 sponsored by Rep. John Johnson. HB 603 rewrote the adoption laws into a new set of statutes entitled, the Montana Adoption Act. This committee heard HB 603, which was worked on meticulously in a subcommittee. The amended bill passed both houses and was signed by the Governor.

In testimony regarding HB 603, you were advised that such a massive piece of legislation would, no doubt, require some fine tuning as practitioners implemented the new requirements of law. HB 455 is the clean up bill. Most of the changes are simple clarification, grammatical clean up, or corrections of errors or omissions in the Act.

The most significant changes are contained in:

- Section 2: Changes the time that a putative father is required to register -- from 5 days before the hearing to terminate parental rights, to 72 hours after the child's birth. The current time frame does not work, because hearing dates are not dates certain and requires repeated checking of the registry. Vital Statistics Bureau has 5 days to respond to a request to search the registry, so you could run into a situation where you don't get the information you need for the hearing and an adoption is unnecessarily delayed. The 72 hour time frame coincides with the time a birth parent may relinquish rights to a child. This puts the process of both parents on the same time track and allows an infant to be placed with adoptive parents at the earliest time possible while protecting the rights of both birth parents.

- Section 7: Deletes the requirement that a putative father who is trying to prove that he has established a substantial relationship with his child be required to register. If a man's actions, as detailed in 42-2-610(4), demonstrate the he has made a substantial commitment to his child, he shouldn't be required to register. The registry was intended to address absent, putative fathers – not trick or trap those who are acting responsibly.

- Section 9: These amendments address a good idea that didn't work. There is currently a requirement that an evaluator of an adoptive family conduct a search of criminal records, CPS records and youth court records on everyone over 13 years of age in a preadoptive home. The changes will still require a criminal and CPS records check on the adoptive parents and will allow an evaluator access to youth court records if considered necessary. Now it is impossible to get this information on most adults due to mandatory destruction of records. These changes allow an evaluator to get the information he or she needs to make a good assessment on the adoptive couple, but doesn't cause unnecessary delays and require futile efforts.

I urge your support of HB 455.

HOUSE OF REPRESENTATIVE
ROLL CALL

JUDICIARY COMMITTEE

DATE 2/8/99

NAME	PRESENT	ABSENT	EXCUSED
Robert C. Clark, chair	✓		
Dan McGee, vice chair	✓		
Diana Wyatt, vice chair	✓		
Chris Ahner	✓		
Shiell Anderson	✓		
Paul Clark	✓		
Aubyn A. Curtiss	✓		
Bill Eggers	✓		
Tom Facey	✓		
Steven Gallus	✓		
Gail Gutsche	✓		
Joan Hurdle	✓		
Rick Jore	✓		
Sam Kitzenberg	✓		
Brad Molnar	✓		
Mark Noennig	✓		
Jim Shockley	✓		
Loren Soft	✓		
Carol Williams	✓		
Cindy Younkin	✓		

2

MONTANA HOUSE OF REPRESENTATIVES
VISITORS REGISTER

HOUSE JUDICIARY COMMITTEE

DATE 2/8/99

BILL NO. HB 455 SPONSOR(S) Sofe

PROPONENT (P) OPPONENT (O) INFORMATIONAL (I)
(PLEASE IDENTIFY TYPE OF VISITOR)

PLEASE PRINT

TYPE	NAME	ADDRESS	REPRESENTING
P	Rosemary Miller	25 So. Ewing	Catholic Social Services
P	Ann G. Dery	1219 8th Ave	Sup. Ct. Ct Assess Prog.
P	H. Mark Ricks	2001 11th Ave Hel	LDS Social Services
P	CHUCK HUNTER		D.P.H.H.S.
P	Sharon Hoff	Helena	MT Catholic Conf
P	BILL DRISCOLL	HELENA	MYSELF

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN ROBERT C. CLARK**, on February 10, 1999 at 8:00 A.M., in Room 312 - 1 Capitol.

ROLL CALL

Members Present:
Rep. Robert C. Clark, Chairman (R)
Rep. Dan McGee, Vice Chairman (R)
Rep. Diana Wyatt, Vice Chairman (D)
Rep. Shiell Anderson (R)
Rep. Paul Clark (D)
Rep. Aubyn A. Curtiss (R)
Rep. Bill Eggers (D)
Rep. Tom Facey (D)
Rep. Steven Gallus (D)
Rep. Gail Gutsche (D)
Rep. Joan Hurdle (D)
Rep. Rick Jore (R)
Rep. Sam Kitzenberg (R)
Rep. Brad Molnar (R)
Rep. Mark Noennig (R)
Rep. Jim Shockley (R)
Rep. Loren Soft (R)
Rep. Carol Williams (D)
Rep. Cindy Younkin (R)

Members Excused: Rep. Chris Ahner (R)

Members Absent: None.

Staff Present: John MacMaster, Legislative Branch
Pam Schindler, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:
Hearing(s) & Date(s) Posted: HB 481, HB 482, 2/4/1999
Executive Action: HB 455-Do Pass, HB 449-Do Pass

Gene Kizer, Board of Crime Control
{Tape : 2; Side : B; Approx. Time Counter : 45 - 93}
Allan Horsfal, Board of Crime Control
{Tape : 2; Side : B; Approx. Time Counter : 93 - 161}
Jim Oberhofen, Standards of Law Enforcement Officers
{Tape : 2; Side : B; Approx. Time Counter : 161 - 242}
Wendy Ore, Montana Dept. of Corrections
{Tape : 2; Side : B; Approx. Time Counter : 242 - 250}
Greg Noose, Montana Law Enforcement Academy
{Tape : 2; Side : B; Approx. Time Counter : 250 - 349}

Questions from Committee Members and Responses:

{Tape : 2; Side : B; Approx. Time Counter : 349 - 550}
{Tape : 3; Side : A; Approx. Time Counter : 0 - 550}
{Tape : 3; Side : B; Approx. Time Counter : 0 - 32}
EXHIBIT(11)

Closing by Sponsor:

Rep. Mangan made closing statements.
{Tape : 3; Side : B; Approx. Time Counter : 32 - 136}

EXECUTIVE ACTION ON HB 449

Motion/Vote: **REP. HURDLE** moved that **HB 449 DO PASS**. Motion carried 10-9 with Anderson, Clark, Clark, Curtiss, Jore, Kitzenberg, McGee, Molnar, and Soft voting no. (Rep. Ahner excused; illness)

EXECUTIVE ACTION ON HB 455

Motion: **REP. ANDERSON** moved that **HB 455 DO PASS**.
Motion: **REP. MOLNAR** moved that **HB 455 BE AMENDED. AMENDMENT FAILS ON A VOICE VOTE.**
Motion/Vote: **REP. ANDERSON** moved that **HB 455 DO PASS**. Motion carried 15-4 with Clark, Curtiss, Jore, and Molnar voting no. (Rep. Ahner excused; illness)

Meeting adjourned.

HOUSE STANDING COMMITTEE REPORT

February 10, 1999

Mr. Speaker:

We, your committee on **Judiciary** report that **House Bill 455** (first reading copy -- white) **do pass.**

Signed: Robert Bob Clark
Representative Robert C. Clark, Chair

- END -

Committee Vote:
Yes 16, No 4.

331319SC.ham

HOUSE OF REPRESENTATIVE
ROLL CALL

JUDICIARY COMMITTEE

DATE 2/10/99

NAME	PRESENT	ABSENT	EXCUSED
Robert C. Clark, chair	✓		
Dan McGee, vice chair	✓		
Diana Wyatt, vice chair	✓		
Chris Ahner	(✓)		✓
Shiell Anderson	✓		
Paul Clark	✓		
Aubyn A. Curtiss	✓		
Bill Eggers	✓		
Tom Facey	✓		
Steven Gallus	✓		
Gail Gutsche	✓		
Joan Hurdle	✓		
Rick Jore	✓		
Sam Kitzenberg	✓		
Brad Molnar	✓		
Mark Noenning	✓		
Jim Shockley	✓		
Loren Soft	✓		
Carol Williams	✓		
Cindy Younkin	✓		

2

HOUSE OF REPRESENTATIVES
COMMITTEE PROXY

JUDICIARY COMMITTEE

DATE 2/10/99

I request to be excused from the Judiciary Committee meeting this date because of other commitments. I desire to leave my proxy vote with Mc Gee.

Indicate **Bill Number** and your vote **Aye** or **No**. If there are **amendments**, list them **by name and number** under the bill and indicate a **separate vote for each amendment.**

HOUSE BILL/AMENDMENT	AYE	NO
HB 449		X
HB 455	X	
HB 492	X	
SB 213	X	

SENATE BILL/AMENDMENT	AYE	NO

Rep. Sam Kubiszewski
(Signature)

HR:1993
WP/PROXY

HOUSE OF REPRESENTATIVES
COMMITTEE PROXY

Judiciary

DATE 2/8/99

I request to be excused from the Judiciary Committee meeting this date because of other commitments. I desire to leave my proxy vote with Gail Fetsche / Meyer.

Indicate **Bill Number** and your vote **Aye** or **No**. If there are **amendments**, list them **by name and number** under the bill and indicate a **separate vote for each amendment**.

HOUSE BILL/AMENDMENT	AYE	NO
HB 449	✓	
HB 455	✓	
Molnar Amend		no
SB 54		
SB 213		

SENATE BILL/AMENDMENT	AYE	NO

Rep. [signature]
(Signature)

HR:1993
WP/PROXY

LEGISLATIVE TAPE LOG

HOUSE JUDICIARY COMMITTEE

PAMELA SCHINDLER, Secretary

Date: 2/10/99

Tape 3 Side B

TAPE COUNT	NOTES (Exec. Action)
Cont -	HB 455 - Anderson DoPass
	Doenning - putative father?
	Molnar - our septemtrial bad? page 5 line 5-6
	MOVE AMENDMENT -
	Strike page 5 line 5-6 sub 4
	Younkin - page 6
	Doenning - cross ref. to page 6 - agrees w/ Younkin.
	McMaster - same language (McGee)
	Hurdle - ask Molnar why strike
Tape 4 Side A 00	Molnar - responds
	Soft - adoption situation; 16 yrs "Hit & Run" Dads - oppose motion
	Molnar - responds
	Soft - not a problem -
	C - Anderson - amendment
	Amendment fails
	McGee - registered Putative father.
	Soft - responds - match termination/crt date.
	McGee - uncomfortable w/ 72 hrs rule.
	Hurdle - extend time of mother - coordinate.
	Shockley - law/motion date unfounded
	Doenning - hearing day - all sorts of matters -
	Younkin - 3 days
	McGee - re. notice of 3 days

LEGISLATIVE TAPE LOG

HOUSE JUDICIARY COMMITTEE

PAMELA SCHINDLER, Secretary

Date: 2/10/99

Tape 4
Side A

TAPE COUNT	NOTES (Exec. Act.)
cont.	HB 455
	2. DO Pass - Jore
	Malnon
	R Clark
	HB 455 15/4 passed Curtis
	(abnormal)
215	adjourned 11:37

HB 407 SPONSOR: Younkin, Cindy SHORT TITLE: Revise adjudication laws
REFERRED ON: 02/22/1999 HEARD ON: 03/15/1999
TABLED ON: 03/26/1999
FINAL DISPOSITION 04/22/1999 (S) Died in Standing Committee

HB 455 SPONSOR: Soft, Loren SHORT TITLE: Generally revise laws relating to adoption
REFERRED ON: 02/22/1999 HEARD ON: 03/26/1999
EXECUTIVE ACTION: 03/26/1999 Bill Concurred -- VOTE: 7 - 0
FINAL DISPOSITION 04/07/1999 Chapter Number Assigned

HB 459 SPONSOR: Clark, Robert SHORT TITLE: Concealed weapon permit reciprocity with other states
REFERRED ON: 02/22/1999 HEARD ON: 03/18/1999
EXECUTIVE ACTION: 03/26/1999 Bill Concurred as Amended -- VOTE: 6 - 0
FINAL DISPOSITION 04/29/1999 Chapter Number Assigned

HB 482 SPONSOR: Mangan, Jeff SHORT TITLE: Revise laws governing juvenile detention officer training
REFERRED ON: 02/22/1999 HEARD ON: 03/25/1999 (S) Discussed in Committee ON: 03/25/1999
EXECUTIVE ACTION: 03/27/1999 Bill Concurred as Amended -- VOTE: 5 - 1
FINAL DISPOSITION 04/27/1999 Chapter Number Assigned

HB 492 SPONSOR: Harper, Hal SHORT TITLE: Criminalize desecration of a place of worship, cemetery, or public memorial
REFERRED ON: 02/22/1999 HEARD ON: 03/11/1999
EXECUTIVE ACTION: 03/11/1999 Bill Concurred -- VOTE: 7 - 0
FINAL DISPOSITION 03/24/1999 Chapter Number Assigned

HB 516 SPONSOR: Grinde, Larry SHORT TITLE: Interim study on tax-exempt status related to certain public charity enterprises
REFERRED ON: 04/06/1999 HEARD ON: 04/08/1999
EXECUTIVE ACTION: 04/13/1999 Bill Concurred as Amended -- VOTE: 6 - 3
FINAL DISPOSITION 04/15/1999 (S) 3rd Reading Failed; Vote: 11 - 39

HB 527 SPONSOR: Harper, Hal SHORT TITLE: Impose interlock ignition requirement on second or subsequent offense
REFERRED ON: 02/23/1999 HEARD ON: 03/23/1999
EXECUTIVE ACTION: 03/25/1999 Bill Concurred -- VOTE: 7 - 1
FINAL DISPOSITION 04/07/1999 Chapter Number Assigned

MINUTES

MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN LORENTS GROSFIELD**, on March 26, 1999 at 8:05 A.M., in Room 325 Capitol.

ROLL CALL

Members Present:
Sen. Lorents Grosfield, Chairman (R)
Sen. Al Bishop, Vice Chairman (R)
Sen. Sue Bartlett (D)
Sen. Steve Doherty (D)
Sen. Duane Grimes (R)
Sen. Mike Halligan (D)
Sen. Ric Holden (R)
Sen. Reiny Jabs (R)
Sen. Walter McNutt (R)

Members Excused: None.

Members Absent: None.

Staff Present: Delila Croucher, Committee Secretary
Valencia Lane, Legislative Branch

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:
Hearing(s) & Date(s) Posted: HB 455, HB 530,
Executive Action: HB 185; HB 197; HB269; HB 530; HB 455; HB 482

EXECUTIVE ACTION ON HB 482

Motion/Vote: **SEN. BARTLETT** moved that **AMENDMENT HB0048201.avl BE ADOPTED WITH CHANGES. Motion carried 6-0 with Doherty, Jabs and Grimes being absent. EXHIBIT(1)**

Jeff Mangen, HD 45, Great Falls presented a conceptual amendment to the Committee.

SEN. GROSFIELD said that perhaps we should keep section one, change line 20 of section two, and keep section three. It may be possible to implement a two year sunset provision.

SEN. HALLIGAN suggested the Committee send the Department a strong letter requesting rules be adopted to implement family advocacy. **Mr. Hunter** agreed that the message is clear that the Department needs to be doing something like this. There are many good things in this bill that can be put into practice right away, such as providing information to the family about process, the law, and their rights.

SEN. BISHOP maintained that this is a bill that is not needed. A court can appoint people to do some of these things. When a family member is given this much authority, they may make things worse. There are enough people involved in these situations already.

Motion: **SEN. BISHOP** moved that **HB 269 BE TABLED. Motion Failed.**

SEN. GROSFIELD contended that the Committee had a few options. One option is to sit on the bill. Another is to scale the bill down and rewrite it. The Committee planned on meeting for a few minutes upon adjournment of the Senate.
{Tape : 1; Side : A; Approx. Time Counter : 30.1 - Tape : 1; Side : B; Approx. Time Counter : 9.9}

HEARING ON HB 455

Sponsor: **REP. LAUREN SOFT, HD 12, N.E. Billings Heights**

Proponents: **Anne Gilke, Supreme Court Assessment Council**
Rosemary Miller, Catholic Social Service
Mark Ricks, LDS Social Services
Sharon Hoff, Montana Catholic Conference

Opponents: **None**

Opening Statement by Sponsor:

REP. SOFT opened on his bill. As a result of the work done with the people in the Departments and in the adoption task force, this bill is intended to clarify laws relating to adoption. There are a few areas of this bill that are necessary to discuss. First, the bill addresses the time period for the termination of parental rights. In the 1997 Legislative Session language was inserted that said five days prior to a hearing, termination of

parental rights would occur. The adoption workers did a good job trying to stay within that time frame, but found that working with the courts in that time frame is very difficult if not impossible. Therefore, the time line was changed to 72 hours after the birth of a child as a minimum time to relinquish rights to the child. Next, it was requested that the name, phone number, address and other information on the adoptive parent should be made available as opposed to just their attorney. This adds a more human element to the adoption process. Third, the bill has a deletion of a requirement for the punitive father to register with the punitive father registry if the father has established a substantial relationship with the child. The requirements for a substantial relationship are outlined in the bill. If a substantial relationship with the father is established, there is no need to go through the process of the punitive father registry. Fourth, the bill allows for, but is not mandatory, for a background check on people thirteen years of age in potential adoptive homes. Finally, the bill says that when there is a direct placement with a member of an extended family the court can waive the requirement of a pre-placement evaluation.
{Tape : 1; Side : B; Approx. Time Counter : 9.9 - 15.8}

<u>Proponents' Testimony</u>:

Ann Gilke, Supreme Court Assessment Program, rose in support of the bill. In 1995 the Department of Health and Human Services was told by the legislature to study the adoption statutes and to look at the Uniform Adoption Act that was being proposed nationally, and reconcile the two and improve the statutes of Montana. This is a clean-up bill from the bill drafted from the 1995 study, and was presented to the 1997 Legislature. The change from a punitive father needing to register, from five days before a hearing to terminate parental rights, to seventy-two hours after child's birth, is a good thing.

The punitive father often does not know when the hearing date is. The birth of a child is a more meaningful child and the father is more likely be aware of this date. When a punitive father is trying to prove that he has a substantial relationship with a child, he does not need to register. This way, no one is tricked or trapped if they miss a registration provision but have a meaningful relationship with the child. Background checks on adoptive families for everyone thirteen years of age or older. What was found by the private adoption agencies that are required to comply with these statutes was that anyone over thirty or thirty-three in the home, which a lot of these parents are, there were no youth court records on them because they have been destroyed based on probations own requirements of destruction of

records. This bill says that youth court records can be looked at but that it is not a requirement. **EXHIBIT(2)**
{Tape : 1; Side : B; Approx. Time Counter : 15.8 - 19.7}

Rosemary Miller, Catholic Social Service, rose in support of the bill. The punitive father registry established in the last session has really helped to make sure that birth father's rights are attended to. The changes presented in this bill would make it a lot easier, legally, to be able to do the job at hand, which is placing children for adoption.
{Tape : 1; Side : B; Approx. Time Counter : 19.7 - 20.3}

Mark Ricks, Director of LDS Social Services, rose in support of the bill. It will simplify adoption work in working with birth mothers and fathers. When it is in the best interest of the baby, the birth mother and the adoptive family to move swiftly it is done.
{Tape : 1; Side : B; Approx. Time Counter : 20.3 - 21.4}

Sharon Hoff, Montana Catholic Conference, rose in support of the bill.
{Tape : 1; Side : B; Approx. Time Counter : 21.4 - 21.6}

Opponents' Testimony: None

Questions from Committee Members and Responses:

SEN. HALLIGAN asked how this bill would respond to fathers that are not aware that their child is being delivered and the seventy-two hour time limit occurs. He inquired if there is any middle ground that would allow for notice to the potential father. **Ann Gilke** said that the date which was in the existing bill was not working. When the task force got back together and discussed the clean-up sections, seventy-two hours after the birth of the child was determined because it coincides with the time a birth parent can relinquish parental rights. That date is not set in stone, it simply responds to the five days prior to a hearing because that is not working. There is not much of a time difference between the two in most cases. Hearings are often close to the child's birth.

SEN. HALLIGAN asked if a person is listed as a father on the birth certificate, is that the presumption. **Ms. Gilke** said that it is a requirement to give notice to a presumed father listed on the birth certificate and all the other possible fathers.
{Tape : 1; Side : B; Approx. Time Counter : 21.6 - 24.8}

SEN. GROSFIELD asked **Ms. Gilke** to comment on the repealer. **Ms. Gilke** said that the repealed section implemented by this bill

deals with step-parent adoption. The task force compiled statutes from other states and the information taken on step-parent adoption was more confusing than existing statute. This cleans up Montana adoption so that step-parent adoptions didn't change from past law to the new Montana Adoption Act. This statute was removed because it really didn't make much sense.

Closing by Sponsor:

REP. SOFT closed on his bill. A question came up in the House hearing much like **SEN. HALLIGAN'S** question. The birth mother comes forward with information on possible fathers. Once that occurs then various adoption agencies actively pursuit that information to locate medical records and inform the father of what is going on. Once he is informed, a hearing date is set. *{Tape : 1; Side : B; Approx. Time Counter : 24.8 - 27.6}*

EXECUTIVE ACTION ON HB 455

Motion/Vote: **SEN. HALLIGAN** moved that **HB 455 BE CONCURRED IN.** Motion carried 7-0.

HEARING ON HB 530

Sponsor: REP. DAN MCGEE, HD 21, Laurel

Proponents:
George Mulchare-Jones, Butte Physician
Sharon Hoff, Montana Catholic Conference
Mary Ann Harrison, President for Mission for Life
Laurie Koutnik, Christian Coalition of Montana
Jenny Dodge, Citizens' Network
Linda Holden, Citizen
Arlette Randash, Eagle Forum

Opponents:
Christine Kaufmann, Montana Affiliate of the National Abortion League
Tammy Watts, Citizen
Mark Miles, MD, Citizen
Julie Daffin, Montana Right to Life
Maureen Britell, National Abortion Federation
Devin Hartman, Intermountain Planned Parenthood
Anita Kuennen, Blue Mountain Clinic
REP. GAIL GUTSCHE, HD 66, Missoula
Beth Brenneman, ACLU of Montana
Rebecca Moog, Montana Woman's Lobby

SENATE STANDING COMMITTEE REPORT

March 26, 1999

Mr. President:

We, your committee on **Judiciary** report that **House Bill 455** (third reading copy -- blue) **be concurred in.**

Signed: _____
Senator Lorents Grosfield, Chair

To be carried by Senator Mike Halligan

- END -

Committee Vote:
Yes 7, No 0.

681201SC.srf

#2
HB455
EXHIBIT 2
DATE 3-26-99
HB 455

Testimony in Support of HB 455
Ann Gilkey
Supreme Court, Court Assessment Program

March 26, 1999

The 1995 Legislature required DPHHS to convene a study group to review Montana's adoption statutes and the proposed Uniform Adoption Act. Over that biennium, the adoption task force (an ad hoc group of interested parties) compiled legislation that became HB 603 sponsored by Rep. John Johnson. HB 603 rewrote the adoption laws into a new set of statutes entitled The Montana Adoption Act. The Act has received great state-wide and national support. With such a massive piece of legislation, however, we knew that there would need to be some adjustments as adoption practitioners put the new law into practice. HB 455 is the clean up bill. Most of the changes are simple clarification, grammatical corrections, or errors or omissions in the original legislation.

The most significant changes are contained in:

- Section 2: Changes the time that a putative father is required to register -- from 5 days before the hearing to terminate parental rights to 72 hours after the child's birth. The current time frame does not work because hearing dates are not certain and requires repeated checking of the registry. Vital statistics Bureau has 5 days to respond to a request to search the registry, so you could run into a situation where you don't get the information you need for the hearing and an adoption is unnecessarily delayed. The 72 hour time frame coincides with the time a birth parent may relinquish rights to a child. This puts the process of both parents on the same time track and allows an infant to be placed with adoptive parents at the earliest time possible while protecting the rights of both birth parents.

- Section 7: Deletes the requirement that a putative father who is trying to prove that he has established a substantial relationship with his child be required to register. If a man's actions, as detailed in 42-2-610(4), demonstrate that he has made a substantial commitment to his child, he shouldn't be required to register. The registry was intended to address absent, putative fathers -- not trick or trap those who are acting responsibly.

- Section 9: These amendments address a good idea that didn't work. There is currently a requirement that an evaluator of an adoptive family conduct a search of criminal records, CPS records and youth court records on everyone over 13 years of age in a preadoptive home. The changes will still require a criminal and CPS records check on the adoptive parents and will allow an evaluator access to youth court records if considered necessary. Now it is impossible to get this information on most adults due to mandatory destruction of records. Theses changes allow an evaluator to get the information he or she needs to make a good assessment of the adoptive couple, but doesn't case unnecessary delays and require futile efforts.

MONTANA SENATE
1999 LEGISLATURE
JUDICIARY COMMITTEE
ROLL CALL

DATE 3-26-99

NAME	PRESENT	ABSENT	EXCUSED
SEN. SUE BARTLETT	X		
SEN. STEVE DOHERTY	X		
SEN. DUANE GRIMES	X		
SEN. MIKE HALLIGAN	X		
SEN. RIC HOLDEN	X		
SEN. REINY JABS	X		
SEN. WALT MC NUTT	X		
SEN. AL BISHOP,VICE CHAIRMAN	X		
SEN. LORENTS GROSFIELD, CHAIRMAN	X		

DATE 3-26-99

SENATE COMMITTEE ON Judiciary

BILLS BEING HEARD TODAY: HB455 HB530

Executive Action

PLEASE PRINT

NAME	PHONE	REPRESENTING	BILL #	SUPPORT	OPPOSE
MAXINE HOMER	442-3641	Christian Church (Disciples of Christ) Women of Mt	530		X
Ann Gilkey	444-5497	Sup. Ct Court Assessment Program	455	X	
[illegible] Mark Rickes	443-7660	LDS S.S.	455	X	
Linda Holden	279-3326	Self.	530	X	
Arlette Randash	443-0870	Eagle Forum	530	X	
Laurie Koutnik	442-6290	CCoy MT	530	X	
Sharon Hoff	442-5761	MT Catholic Conf	530 455	X X	
Rosemary Miller	442-4130	Catholic Social Services	455	X	
CHUCK HUNTER	444-9740	D.P.H.H.S.	455	X	
DEVON HARTMAN	443-7676	Intermountain Planned Parenthood	530		X
Debbie Holm	443-7676	Intermountain Planned Parenthood	530		X
Jerry Dodge	449-5606	Citizens' Network	530	X	
Maryann Harris	388-8189	Mission For Life	550	X	

M

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

AN ACT GENERALLY REVISING THE LAWS RELATING TO ADOPTION; AMENDING SECTIONS 42-1-105, 42-2-206, 42-2-217, 42-2-412, 42-2-607, 42-2-609, 42-2-610, 42-2-619, 42-3-203, 42-3-212, 42-3-213, 42-4-302, 42-4-303, 42-4-304, 42-4-309, 42-4-310, 42-5-101, 42-5-109, AND 42-5-202, MCA; REPEALING SECTION 42-4-305, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 42-1-105, MCA, is amended to read:

"**42-1-105. Who may be adopted.** (1) A child is legally free for adoption if:

(a) the child does not have a living parent;

(b) the parental rights of the living parents of the child have been terminated according to the laws of this state or of another jurisdiction; or

(c) the living parents, guardian authorized by the court, or department or agency with custody of the child consent to the adoption.

(2) An adult may be adopted as provided in 42-4-401 through 42-4-405.

(3) A stepchild may be adopted as provided in 42-4-301 through ~~42-4-305~~ 42-4-304 and 42-4-309 through 42-4-312."

Section 2. Section 42-2-206, MCA, is amended to read:

"**42-2-206. When putative father to register -- actual knowledge of pregnancy not required.** (1) In order to be entitled, because of registration, to receive notice of a termination of parental rights proceeding, a putative father's registration form complying with the requirements of 42-2-205 must be received by the department not later than ~~5 days prior to a hearing to terminate parental rights~~ 72 hours after the child's birth.

(2) A putative father may file all information required by 42-2-205 before a child's birth even though the putative father has no actual knowledge that a pregnancy has occurred or that a pregnancy

has continued through gestation."

Section 3. Section 42-2-217, MCA, is amended to read:

"42-2-217. ~~(Effective October 1, 1998)~~ **Registry search -- request -- affidavit.** (1) The following persons may at any time request that the department search the registry to determine whether a putative father is registered in relation to a child who is or may be the subject of a proceeding to terminate parental rights:

(a) a representative of the department;

(b) a representative of an agency when the agency is or may be arranging an adoption;

(c) a prospective adoptive parent or an attorney representing a prospective adoptive parent in a direct parental placement adoption who has the notarized consent of the birth mother; or

(d) any woman who is the subject of a registration.

(2) ~~When a petition to terminate parental rights for purposes of an adoption is filed, the petitioner shall:~~

~~(a) request that the department search the registry at least 1 day after the expiration of the period specified under 42-2-206; and~~

~~(b) file an affidavit prepared by the department in response to a request under subsection (2)(a) with the court presiding over the termination of parental rights proceeding under 42-2-603. The affidavit must meet~~ Upon request of a person listed in subsection (1), the department shall submit an affidavit pursuant to the requirements of subsections (4) and (5).

(3) A request for information about a registration from the department must be in writing.

(4) Not later than 5 days after receiving a request ~~under subsection (2)(a)~~ for a registry search, the department shall submit an affidavit to the requestor verifying whether a putative father has registered within the period allowed under 42-2-206 in relation to a mother whose child or expected child is the subject of the termination proceeding.

(5) Whenever the department finds that one or more putative fathers are registered, the department shall:

(a) submit a copy of each registration form with the department's affidavit; and

(b) include in the affidavit the date that the department representative, agency, or attorney

submitted the request for the search.

(6) A court may not issue an order terminating parental rights unless the department's affidavit under subsection (5) is filed with the court."

Section 4. Section 42-2-412, MCA, is amended to read:

"**42-2-412. Content of relinquishment and consent to adopt.** (1) A relinquishment and consent to adopt must be in writing and must contain:

(a) the date, place, and time of the execution of relinquishment and consent to adopt;

(b) the name, date of birth, and current mailing address of the individual executing the relinquishment and consent to adopt;

(c) the date of birth and the name of the child to be adopted; and

(d) the name, address, and telephone numbers of the department or agency to which the child is being relinquished or the name, address, and telephone numbers of the prospective adoptive parent ~~or the lawyer representing the prospective adoptive parent~~ with whom the individual executing the relinquishment and consent has placed or intends to place the child for adoption.

(2) A relinquishment and consent to adopt executed by a parent or guardian must state that the parent or guardian executing the document is voluntarily and unequivocally consenting to the:

(a) permanent transfer of legal and physical custody of the child to the department or agency for the purposes of adoption; or

(b) transfer of permanent legal and physical custody to, and the adoption of the child by, a specific identified adoptive parent whom the parent or guardian has selected.

(3) A relinquishment and consent to adopt must state:

(a) that after the document is signed or confirmed in substantial compliance with this section, it is final and, except under a circumstance stated in 42-2-411, may not be revoked or set aside for any reason, including the failure of an adoptive parent to permit the individual executing the relinquishment and consent to adopt to visit or communicate with the child;

(b) that the ~~adoption will extinguish~~ relinquishment will result in the extinguishment of all parental rights and obligations that the individual executing the relinquishment and consent to adopt has with respect to the child, except for arrearages of child support unless the arrearages are waived by the person

to whom they are owed, and that the relinquishment will remain valid whether or not any agreement for visitation or communication with the child is later performed;

(c) that the individual executing the relinquishment and consent to ~~adoption~~ adopt has:

(i) received a copy of the relinquishment and consent to ~~adoption~~ adopt;

(ii) received a copy of a written agreement by the department, agency, or prospective adoptive parent to accept temporary custody and to provide support and care to the child until an adoption petition is granted or denied;

(iii) if required, received counseling services ~~and information about adoption~~ pursuant to 42-2-409 explaining the meaning and consequences of an adoption;

(d) in direct parental placement adoptions, that the individual has:

~~(i) been advised if the individual is:~~

~~(A)~~(i) if a minor parent, been advised by a lawyer who is not representing ~~an~~ the adoptive parent ~~or the agency to which the child is being relinquished~~; ~~or~~

~~(B)~~(ii) if an adult, been advised of the right to have a lawyer who is not representing ~~an~~ the adoptive parent ~~or the agency and whose~~;

(iii) been advised that the attorney fees are allowable expenses that can be paid by the prospective adoptive parents; and

~~(ii)~~(iv) been provided with a copy of the prospective adoptive parent's preplacement evaluation;

(e) in agency and direct parental placement adoptions, that the individual has:

(i) been advised of the obligation to provide the medical and social history information required under 42-3-101 pertaining to disclosures; and

(ii) not received or been promised any money or anything of value for execution of the relinquishment and consent to adopt, except for payments authorized by 42-7-101 and 42-7-102.

(4) A relinquishment and consent to adopt may provide that the individual who is relinquishing waives notice of any proceeding for adoption."

Section 5. Section 42-2-607, MCA, is amended to read:

"**42-2-607. Grounds for termination of parental rights.** The court may terminate a parent's rights to a child who is the subject of an adoption proceeding based upon:

(1) the voluntary acts of the parent in:

(a) executing a voluntary relinquishment and consent to adopt;

(b) submitting a notarized denial of paternity executed pursuant to 42-2-421; or

(c) submitting a notarized acknowledgment of paternity and denial of interest in custody of the child executed pursuant to 42-2-422;

(2) a determination under 42-2-608 that the parent is unfit;

(3) a determination under 42-2-609 that the relationship of parent and child does not exist; ~~or~~

(4) a determination under 42-2-610 that a putative father has failed to establish and maintain a substantial relationship with the child; or

~~(4)~~(5) a determination that the parent has irrevocably waived parental rights by failing to timely act to protect the rights."

Section 6. Section 42-2-609, MCA, is amended to read:

"**42-2-609. Determination that no parent and child relationship exists.** For purposes of making a child available for adoption, the court may terminate the parental rights of a putative father on the grounds that the parent and child relationship does not exist if:

(1) a judicial determination is made under 40-6-107 that the parent and child relationship does not exist. This includes the termination of the parental rights of the husband of the mother who is placing the child for adoption or the parental rights of an individual who is a presumed father of the child.

(2) a determination is made that:

(a) an individual has not timely registered with the putative father registry;

(b) ~~a person~~ an individual has not been adjudicated, in Montana, to be the father of the child for the purpose of child support;

(c) ~~a person~~ an individual has not been recorded on the child's birth certificate as the child's father;

(d) ~~a person is~~ an individual has not openly ~~living~~ lived with the child and the child's mother at the time that the proceeding is initiated or at the time that the child was placed in the care of an authorized agency and ~~a person~~ an individual is not representing to the public that the ~~person~~ individual is the child's father; ~~or~~ and

(e) the child's mother was not married to the person who is the subject of the termination proceedings at the probable time of the child's conception or at the time that the child was born; or

(3) a putative father ~~who~~ appears at the hearing but is unable to establish by a preponderance of the evidence the minimum requirements provided in 42-2-610 for demonstrating the establishment of a substantial relationship with the child."

Section 7. Section 42-2-610, MCA, is amended to read:

"**42-2-610. Putative father -- termination based upon failure to establish substantial relationship.** (1) The parental rights of a putative father may be terminated by the court if the putative father has failed to timely establish and maintain a substantial relationship with the child.

(2) A putative father who is not married to the child's mother but who has openly lived with the child since the child's birth or for a period of 6 months immediately preceding placement of the child with adoptive parents and has openly claimed to be the father of the child during that period is considered to have developed a substantial relationship with the child and to have otherwise met the requirements of this section.

(3) In order to meet the minimal showing of having established a substantial relationship with regard to a child who is the subject of an adoption proceeding, a putative father has the burden of showing that the putative father has:

(a) demonstrated a full commitment to the responsibilities of parenthood by providing financial support for the child in a fair and reasonable sum and in accordance with the putative father's ability and by either:

(i) visiting the child at least monthly when physically and financially able to do so; or

(ii) having regular contact with the child or with the person or agency having the care and custody of the child when physically and financially able to do so; and

(b) manifested an ability and willingness to assume legal and physical custody of the child if the child was not in the physical custody of the other parent.

(4) In order to meet the minimal showing of having established a substantial relationship with regard to a child who is the subject of an adoption proceeding involving a child who is under 6 months of age at the time that the child becomes the subject of adoption proceedings, a putative father has the

burden to show that~~:~~

~~(a)~~ the putative father has manifested a full commitment to parental responsibilities by:

(a) performing all of the acts described in this subsection (4) prior to the time that the mother executed a relinquishment and consent ~~for adoption, including registering with the putative father registry~~ to adopt; ~~and~~

(b) if the putative father had actual knowledge of the pregnancy, paying a fair and reasonable amount of the expenses incurred in connection with the pregnancy and the child's birth in accordance with the putative father's means when not prevented from doing so by the person or authorized agency having lawful custody of the child;

(c) making reasonable and consistent payments, in accordance with the putative father's means, for the support of the child since birth;

(d) visiting regularly with the child; and

(e) manifesting an ability and willingness to assume legal and physical custody of the child if, during this time, the child was not in the physical custody of the mother.

(5) The subjective intent of a putative father, whether expressed or otherwise, unsupported by evidence of acts specified in this section does not preclude a determination that the father failed to meet the requirements of this section."

Section 8. Section 42-2-619, MCA, is amended to read:

"**42-2-619. Expediency.** A contested termination of parental rights action must take precedence over other cases and matters in the court or on appeal. The court shall examine any issues raised in challenging termination of a parent's rights or regarding the validity of any ~~interlocutory or final~~ adoption decree and shall render a decision as soon as possible."

Section 9. Section 42-3-203, MCA, is amended to read:

"**42-3-203. Information to be reviewed in conducting preplacement evaluation.** (1) A preplacement evaluation must include a review of the following information about the prospective adoptive parent:

(a) a check of criminal conviction data, data on substantiated abuse or neglect of a child under

Title 41, chapter 3, and data pertaining to any involvement in incidents of domestic violence ~~by any person over the age of 13 living in the prospective home~~;

(b) medical and social history and current health;

(c) assessment of potential parenting skills;

(d) assessment of ability to provide adequate financial support for a child; and

(e) assessment of the level of knowledge and awareness of adoption issues, including, when appropriate, matters relating to open, interracial, cross-cultural, and special needs adoptions.

(2) (a) The prospective adoptive parent, the department of justice, and other state, county, and local agencies, after written notice to the subject of the study, shall give the ~~department or agency~~ evaluator completing the adoption study substantiated data pertaining to criminal convictions and any reports concerning domestic violence and substantiated abuse or neglect of children or vulnerable adults.

(b) The adoption study ~~must~~ may also include a check of the youth court records of ~~each~~ any person ~~over the age of 13~~ living in the prospective home. Pursuant to 41-5-215 and 41-5-216, the youth court shall release the requested information to the ~~agency or department~~ evaluator completing the adoption study. ~~The~~ If applicable, the study must include an evaluation of the effect of a conviction, adjudication, or finding of substantiated abuse or neglect on the ability to care for a child.

(3) The preplacement evaluation must include at least one in-home visit with the prospective adoptive parent and at least one interview with each family member."

Section 10. Section 42-3-212, MCA, is amended to read:

"**42-3-212. Court waiver for relatives.** ~~The~~ In a direct parental placement adoption, if the court is satisfied that adoption is in the best interests of the child, the court may waive the requirement of a preplacement evaluation when a parent or guardian places a child for adoption directly with an extended family member of the child. A postplacement evaluation must be conducted during the pendency of a proceeding for adoption."

Section 11. Section 42-3-213, MCA, is amended to read:

"**42-3-213. Filing of evaluation in adoption proceedings.** (1) In a direct parental placement adoption, the preplacement evaluation report must be filed with the court in support of the petition to

terminate parental rights for purposes of adoption.

(2) In an adoption arranged by the department or a licensed child-placing agency, the preplacement evaluation report must be permanently maintained in the files of the department or the licensed child-placing agency."

Section 12. Section 42-4-302, MCA, is amended to read:

"**42-4-302. Standing to adopt stepchild.** (1) A stepparent has standing to file a petition for adoption of a minor ~~stepchild~~ child of the stepparent's spouse if:

(a) the spouse has ~~sole~~ legal and physical custody of the child and the child has been in the physical custody of the spouse and the stepparent during the 60 days preceding the filing of a petition for adoption;

(b) the spouse is deceased or mentally incompetent but, before dying or being judicially declared mentally incompetent, had legal and physical custody of the child, and the child has resided primarily with the stepparent during the 12 months preceding the filing of the petition; or

(c) the department or an agency placed the child with the stepparent.

(2) For good cause shown, a court may allow an individual who is not the stepparent but who has the consent of the custodial parent of a child to file a petition for adoption. The petition must be treated as if the petitioner were a stepparent.

(3) A petition for adoption by a stepparent may be joined with a petition for termination of parental rights."

Section 13. Section 42-4-303, MCA, is amended to read:

"**42-4-303. Consent to adoption.** (1) Upon the filing of the petition for adoption by the stepparent, the child's custodial parent shall file consent to adoption executed pursuant to 42-4-304 ~~or 42-4-305~~.

(2) If the child has attained 12 years of age, the child ~~must~~ shall consent to the adoption."

Section 14. Section 42-4-304, MCA, is amended to read:

"**42-4-304. Consent to adoption -- stepparent's spouse.** (1) A consent to adoption executed by a parent who is the stepparent's spouse must be signed in the presence of an individual authorized to take

acknowledgments.

(2) A consent must be in writing and must state that:

(a) the parent executing the consent has legal and physical custody of the ~~parent's~~ child and voluntarily and unequivocally consents to the adoption of the child by the stepparent;

(b) the adoption will not terminate the parental relationship between the parent executing the consent and the child; and

(c) the parent executing the consent understands and agrees that:

(i) the adoption will terminate the relationship of parent and child between the child's other parent and the child and will terminate any existing court order for custody, visitation, or communication with the child;

(ii) the child and any descendant of the child will retain rights of inheritance from or through the child's other parent; and

(iii) a court order for visitation or communication with the child by an individual related to the child through the parent executing the ~~consent~~ relinquishment or an agreement or order concerning another individual that is approved by the court survives the decree of adoption, but that failure to comply with the terms of the order or agreement is not a ground for revoking or setting aside the consent or the adoption."

Section 15. Section 42-4-309, MCA, is amended to read:

"**42-4-309. ~~Postplacement~~ Preplacement and postplacement evaluation period -- waiver.** ~~If the child is a stepchild or a member of the extended family of the petitioner, the court may, if~~ In a stepparent adoption, if the court is satisfied that the adoption is in the best interests of the child, the court may waive the requirement of a preplacement evaluation and the 6-month postplacement evaluation ~~period~~ and ~~the postplacement evaluation~~ report and grant a decree of adoption."

Section 16. Section 42-4-310, MCA, is amended to read:

"**42-4-310. Petition for adoption -- notice -- hearing.** A stepparent who desires to adopt a stepchild ~~must file a~~ shall obtain an order of termination of parental rights of the child's noncustodial parent prior to or contemporaneously with the petition to adopt. Any necessary consents must be filed

with the petition for adoption.~~, any necessary consents, any required postplacement evaluation, give notice~~ Notice of the hearing on the petition~~,~~ must be given, and the stepparent shall attend ~~a~~ the hearing conducted by the court."

Section 17. Section 42-5-101, MCA, is amended to read:

"**42-5-101. Petition for adoption.** (1) A petition for adoption ~~must be filed in triplicate,~~ must be notarized by the petitioners~~,~~ and must specify:

(a) the full names, ages, and place and duration of residence of the petitioners;

(b) the current marital status of petitioners and, if married, the place and date of the marriage;

(c) the circumstances under which the petitioners obtained physical custody of the child and the name of the individual or agency ~~who~~ that placed the child;

(d) the date and place of birth of the child, if known;

(e) the name used for the child in the proceeding and, if a change in name is desired, the full name by which the child is to be known;

(f) that it is the desire of the petitioners that the relationship of parent and child be established between the petitioners and the child and to have all the rights and be subject to all the duties of that relationship;

(g) a full description and statement of value of all property owned or possessed by the child;

(h) the facts, if any, that excuse consent on the part of a person whose consent is required for the adoption;

(i) that any applicable law governing interstate or intercountry placement was complied with;

(j) that, if applicable, the Indian Child Welfare Act, 25 U.S.C. 1901, et seq., was complied with;

(k) whether a previous petition has been filed by the ~~petitioner~~ petitioners to adopt the child at issue or any other child in any court and the disposition of the petitions; and

(l) the name and address, if known, of any person who is entitled to receive notice of the petition for adoption.

(2) There must be attached to or accompanying the petition:

(a) any written consent required by ~~42-4-405 and 42-5-101 through 42-5-109~~ 42-2-301;

(b) a certified copy of any court order terminating the rights of the child's parents;

(c) a certified copy of any existing court order in any pending proceeding concerning custody of or visitation with the child;

(d) a copy of any agreement with a public agency to provide a subsidy for the benefit of the child with a special need;

(e) the postplacement evaluation prepared pursuant to 42-4-113 or 42-4-209;

(f) a disclosure of any disbursements made in connection with the adoption proceeding.

(3) One copy of the petition must be retained by the court. A copy must be sent to:

(a) the department or to the agency participating in the adoption proceeding; or

(b) the parent placing the child for adoption in a direct parental placement adoption."

Section 18. Section 42-5-109, MCA, is amended to read:

"**42-5-109. Decree of adoption.** A decree of adoption must state:

(1) the original name of the child;

(2) the name of the petitioner for adoption;

(3) whether the petitioner is married or unmarried;

(4) whether the petitioner is a stepparent of the child;

(5) the name by which the child is to be known;

(6) for a child born in Montana, a direction to the vital statistics bureau to issue a new birth certificate unless the adoptee is 12 years of age or older and requests that a new certificate not be issued;

(7) the child's date and place of birth, if known;

(8) the effect of the decree of adoption as stated in 42-5-202;

(9) that the adoption is in the best interests of the child; and

(10) <u>if known,</u> whether ~~the~~ <u>either</u> birth ~~mother~~ <u>parent</u> objects to the release of the original birth certificate information upon the adoptee reaching 18 years of age."

Section 19. Section 42-5-202, MCA, is amended to read:

"**42-5-202. Effect of decree.** (1) After the decree of adoption is entered:

(a) the relationship of parent and child and all the rights, duties, and other legal consequences

of the relation of parent and child exist between the adoptee and the adoptive parent and the kindred of the adoptive parent;

(b) the former parents and the kindred of the former parents of the adoptee, unless they are the adoptive parents or the spouse of an adoptive parent, are relieved of all parental responsibilities for the adoptee and have no rights over the adoptee except for a former parent's duty to pay arrearages for child support.

(2) A decree of adoption ~~should~~ must include ~~a~~ notice to the vital statistics bureau ~~as to the~~ if it is known that either birth ~~mother's consent~~ parent objects to release of the information on the original birth certificate upon the adoptee reaching 18 years of age.

(3) The relationship of parent and child for the purposes of intestate succession is governed by Title 72."

Section 20. Repealer. Section 42-4-305, MCA, is repealed.

Section 21. Effective date. [This act] is effective on passage and approval.

- END -